

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CARLOS RIVERA,

Plaintiff,

v.

**9:05-CV-0967
(TJM/GHL)**

**G. LAWRENCE, Housing Lieutenant,
Mid-State Correctional Facility,**

Defendant.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. George H. Lowe, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule N.D.N.Y. 72.3(c). The Report-Recommendation dated March 31, 2009 recommended that Defendant's motion for summary judgment (dkt. # 45) be denied, and that, to the extent that Plaintiff moves for summary judgment in his Memorandum of Law in Opposition to Defendant's Summary Judgment Motion (dkt. # 47), this motion also be denied.¹ No objections to the Report-Recommendation have been filed and the time to do so has expired.

¹ Also on March 31, 2009, Magistrate Judge Lowe issued an Order requiring the Clerk to serve on Plaintiff "copies of the electronically-available-only opinions cited on pages 5, 7, 9, 11, 16, and 19 of the Report-Recommendation issued on March 31, 2009." Order, dkt. # 51 (citing Lebron v. Sanders, 557 F.3d 76 (2d Cir. 2009)).

After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, the Court adopts the Report-Recommendation for the reasons stated therein.

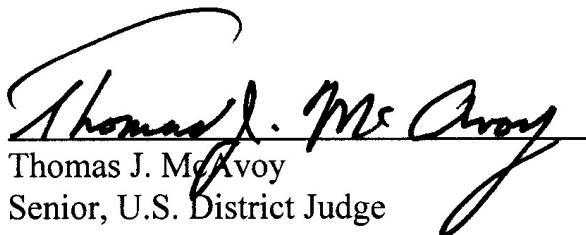
It is therefore,

ORDERED that Defendant's motion for summary judgment (dkt. # 45) is **DENIED**.

And it is further

ORDERED that, to the extent that Plaintiff moves for summary judgment in his Memorandum of Law in Opposition to Defendant's Summary Judgment Motion (dkt. # 47), this motion is also **DENIED**.

DATED: June 18, 2009



Thomas J. McAvoy
Senior, U.S. District Judge